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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

11 RICHARD ESCAMILLA,) Case No. CV 13-06594 (AS)
12 Plaintiff,)
13 v.) **MEMORANDUM OPINION AND**
14 CAROLYN W. COLVIN, Acting) **ORDER OF REMAND**
15 Commissioner of Social)
16 Security,)
17 Defendant.)
18 _____)

19 Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS HEREBY
20 ORDERED that this matter is remanded for further administrative action
21 consistent with this Opinion.

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PROCEEDINGS

On September 19, 2013, Plaintiff filed a Complaint seeking review of the Commissioner's denial of Plaintiff's application for disability insurance benefits and supplemental Social Security Income (Docket Entry No. 3). On January 31, 2014, Defendant filed an Answer and the Administrative Record ("AR"). (Docket Entry Nos. 14, 15). The parties have consented to proceed before a United States Magistrate Judge.

1 (Docket Entry Nos. 8, 11). On April 14, 2014, the parties filed a Joint
2 Stipulation ("Joint Stip.") setting forth their respective positions
3 regarding Plaintiff's claims. (Docket Entry No. 16).

4 The Court has taken this matter under submission without oral
5 argument. See C.D. Local R. 7-15; "Order Re: Procedures in Social
6 Security Case," filed September 20, 2013 (Docket Entry No. 7).

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8 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

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10 On April 21, 2009, Plaintiff, a former assistant representative in
11 a warehouse, filed applications for a period of disability or Disability
12 Insurance Benefits and for Supplemental Social Security Income, alleging
13 an inability to work since September 30, 2006. (See AR 108-18). On
14 November 22, 2011, the Administrative Law Judge ("ALJ"), Dale A. Garwal,
15 examined the record and heard testimony from Plaintiff and vocational
16 expert Sharon Spaventa. (Id. 36-50). On January 23, 2012, the ALJ issued
17 a decision denying Plaintiff's applications. The ALJ determined that
18 from the date after the denial of Plaintiff's prior application for
19 Disability Insurance Benefits (January 9, 2008) through the date last
20 insured (September 30, 2012), Plaintiff had severe impairments --
21 diabetes, poorly controlled, cervical and thoracic degenerative disc
22 disease, cervical spondylosis, hepatitis C, seizures, and depression --
23 but found that Plaintiff was not disabled within the meaning of the
24 Social Security Act. (See AR 18-29).

25 Following the Appeals Council's denial of Plaintiff's request for
26 a review of the hearing decision (see AR 1-4), Plaintiff filed this
27 action in this Court.

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1 application up to January 8, 2008, (see AR 65-68), the doctrine of res
2 judicata required Plaintiff's present application for a period of
3 disability and Disability Insurance Benefits to be denied through
4 January 8, 2008. (See AR 20-21). Accordingly, the ALJ did not consider
5 the medical evidence that pre-dated the January 8, 2008 denial of
6 Plaintiff's prior application in deciding Plaintiff's subsequent
7 application.

8 In the discussion concerning the evidence in the record, the ALJ
9 made the following statements:

10 The claimant has very minimal medical evidence to review
11 and analyze *after* the date of res judicata of January 8, 2008,
12 as detailed above. The bulk of claimant's medical records are
13 derived from Channel Islands Orthopedics from October 2006 to
14 April 2009. As previously discussed above, the undersigned
15 finds that the claimant's prior filing is res judicata and is
16 only examining information for the adjudicative period at
17 issue from January 8, 2008 to the present. As such, some of
18 the medical evidence from Channel Islands will not be
19 discussed (*see* Exhibit 4F/36-93). (AR 24, italics in
20 original).

21 Both Plaintiff and Defendant point out that the ALJ mentioned other
22 medical records that pre-dated January 8, 2008 (see Joint Stip. at 4-5,
23 citing to AR 25), but it is unclear whether such records were actually
24 considered by the ALJ, based on the following statement of the ALJ:
25 "The rem[a]inder of claimant's medical records are dated *before* the date
26 of res judicata . . . , and are therefore not controlling during the
27 adjudicative period at issue." (See AR 25, italics in original,
28 underlining added for emphasis). In any event, contrary to Defendant's
assertion (see Joint Stip. at 5), it is clear the ALJ did not consider
the Channel Islands Orthopedics records that pre-dated January 8, 2008.

1 Based on the Court's review, those records, which are dated from October
2 6, 2006 to December 12, 2007 (relatively near in time to January 8,
3 2008), appear to be relevant to Plaintiff's medical issues (i.e.,
4 cervical spondylosis, cervical and thoracic degenerative disc disease,
5 depression) as well as Plaintiff's pain. (See AR 230-87).

6 **B. Remand Is Warranted**

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8 The decision whether to remand for further proceedings or order an
9 immediate award of benefits is within the district court's discretion.
10 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no
11 useful purpose would be served by further administrative proceedings, or
12 where the record has been fully developed, it is appropriate to exercise
13 this discretion to direct an immediate award of benefits. Id. at 1179
14 ("[T]he decision of whether to remand for further proceedings turns upon
15 the likely utility of such proceedings."). However, where, as here, the
16 circumstances of the case suggest that further administrative review
17 could remedy the ALJ's errors, remand is appropriate. McLeod, 640 F.3d
18 at 888; Harman, 211 F.3d at 1179-81 (where there are outstanding issues
19 that must be resolved before a determination of disability can be made,
20 and it is not clear from the record that the ALJ would be required to
21 find the claimant disabled if all the evidence were properly evaluated,
22 remand is appropriate).

23 Since the ALJ failed to review all of the evidence in the record
24 relevant to Plaintiff's claim, see 20 C.F.R. §§ 404.1520b, 416.920b, and
25 it is unclear whether the ALJ considered other medical records that pre-
26 dated January 8, 2008, remand is appropriate. Because outstanding issues
27 must be resolved before a determination of disability can be made, and
28 "when the record as a whole creates serious doubt as to whether the
[Plaintiff] is, in fact, disabled within the meaning of Social Security
Act," further administrative proceedings would serve a useful purpose

1 and remedy defects. Burrell v. Colvin, 2014 WL 7398892 *6 (9th Cir. Dec.
2 31, 2014)(citations omitted).¹

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4 **ORDER**

5 For the foregoing reasons, the decision of the Commissioner is
6 reversed, and the matter is remanded for further proceedings pursuant to
7 Sentence 4 of 42 U.S.C. § 405(g).

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9 LET JUDGMENT BE ENTERED ACCORDINGLY.

10 DATED: May 29, 2015

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12 /s/
13 ALKA SAGAR
14 UNITED STATES MAGISTRATE JUDGE
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23 ¹ The Court has not reached any other issue raised by Plaintiff
24 except insofar as to determine that reversal with a directive for the
25 immediate payment of benefits would not be appropriate at this time.
26 "[E]valuation of the record as a whole creates serious doubt that
27 Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d at
28 1021. Accordingly, the Court declines to rule on Plaintiff's claims
regarding whether the ALJ erred in discounting the marked functional
limitations found by the psychological consultative examiner, finding
that Plaintiff was not fully credible and failing to have an orthopedic
consultative examination of Plaintiff. Because this matter is being
remanded for further consideration, these issues should also be
considered on remand.